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EXAMINER

SZAFRAN, BRIEANNA TARAH LARELL

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN TYRER

Appeal 2015-007255
Application 13/387,238
Technology Center 3700

Before STEVEN D.A. McCARTHY, LISA M. GUIJT, and
NATHAN A. ENGELS, *Administrative Patent Judges*.

McCARTHY, Administrative Patent Judge.

DECISION ON APPEAL

1 The Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's
2 decision finally rejecting claims 1, 2 and 15–23. We have jurisdiction under
3 35 U.S.C. § 6(b). We sustain the rejection of claims 1, 2 and 15–23 under
4 pre-AIA 35 U.S.C. § 112, second paragraph, as being indefinite. We do not
5 sustain the rejection of claims 1 and 16–23 under pre-AIA 35 U.S.C.
6 § 102(b) as being anticipated by Henz (US 6,431,947 B1, issued Aug. 13,
7 2002); and of claims 2 and 15 under pre-AIA 35 U.S.C. §103(a) as being
8 unpatentable over Henz and Dorf (US 921,812, issued May 18, 1909).

9

¹ The Appellant identifies the real party in interest as Laser Optical
Engineering Ltd., having a place of business in Derbyshire, United
Kingdom.

1 Claim 1 is the sole independent claim on appeal:

2 1. A breast support arrangement comprising:

3 a first breast cup connected with a first wing portion; and

4 a second breast cup connected with a second wing portion;

5 the first and second breast cups and wing portions being
6 interconnected by a connecting member,

7 the connecting member:

8 passing from the first breast cup to the second breast cup
9 via the second wing portion then the first wing portion; and

10 being or including an elastic member to draw the first
11 breast cup towards the second wing portion, the second breast
12 cup towards the first wing portion, and the first and second wing
13 portions towards one another;

14 each wing portion including a wing guide to couple the
15 connecting member to each wing portion and guide movement
16 of the connecting member relative to a respective wing portion,
17 and each wing guide including a guide body which defines a rigid
18 guide portion to receive the connecting member and maintain a
19 relative orientation of respective portions of the connecting
20 member, and the connecting member being moveable in use
21 relative to each wing portion and associated wing guide in
22 response to changes in a wearer's body position to adjust
23 dynamically the configuration of the breast support arrangement.

24 We summarily affirm the Examiner's decision rejecting claims 1, 2
25 and 15–23 under the second paragraph of § 112. The Examiner concludes
26 that the terms “the configuration of the breast support arrangement” in claim
27 1; and “the connecting member guide” in claims 2 and 15 lack antecedent
28 basis. We recognize that lack of antecedent basis alone does not necessarily
29 imply indefiniteness, at least in a litigation context. *See Energizer Holdings,*
30 *Inc. v. International Trade Comm’n*, 435 F.3d 1366, 1370–71 (Fed. Cir.
31 2006). Nevertheless, lack of antecedent basis could lead to confusion as to

1 the relationships between elements recited in a claim. *See* MANUAL OF
2 PATENT EXAMINING PROCEDURE § 2173.05(e) (rev. 7, 2015).

3 The Examiner rejected claims 1, 2 and 15–23 under the second
4 paragraph of §112 in the Final Action; and stated reasons for the rejection.
5 (*See* Final Act. 4–5). The Appellant did not acknowledge the rejection in the
6 Appeal Brief (*see* Br. 4), much less respond. The Examiner repeated the
7 rejection in the Answer, emphasizing that the rejection was still
8 “applicable.” (*See* Ans. 2). The Appellant does not appear to have filed a
9 reply brief.

10 It is not the role of the Board to look for reasons to reverse a decision
11 of an examiner that an appellant has not challenged. We sustain the
12 rejection of the appealed claims under the second paragraph of § 112.
13 Having sustained at least one ground of rejection against each claim on
14 appeal, we affirm the Examiner’s decision rejecting claims 1, 2 and 15–23.
15 *See* 37 C.F.R. § 41.50(a).

16 With respect to the rejection of claim 1 under § 102(b), Figure 6 of
17 Henz depicts a full-support brassiere including a first breast receptor cup 115
18 connected with a first wing portion or back band 106; and a second breast
19 receptor cup 116 connected with a second wing portion or back band 107.
20 (*See* Henz, col. 2, l. 57 – col. 3, l. 10). A connector member including two
21 connector member portions, a shoulder strap assembly 102 and a shoulder
22 strap assembly 103, interconnects the first and second breast receptor cups
23 115, 116; and the wing portions or back bands 106, 107. (*See* Henz, col. 3,
24 ll. 3–10 and 34–37). As depicted in Figure 6, the shoulder strap assemblies
25 102, 103 cross at the wearer’s back (*see* Henz, col. 3, ll. 34–37 & col. 5, ll.
26 10–14), so that the connecting member passes from the first breast receptor

1 cup 115 to the second breast receptor cup 116 via the second wing portion or
2 back band 107, then the first wing portion or back band 106.

3 The shoulder strap assembly 102 passes through loops 109, 111,
4 which orient a lower portion of the shoulder strap assembly 102 along the
5 wing portion or back band 107. The shoulder strap assembly 103 passes
6 through loops 108, 110, which orient a lower portion of the shoulder strap
7 assembly 103 along the wing portion or back band 106. A hook 100 and an
8 eye 101 connect the ends of the shoulder strap assemblies 102, 103 to secure
9 the brassiere to the wearer. (*See* Henz, col. 5, ll. 14–18 & Fig. 6; *see also*
10 Br. 5).

11 The end of the shoulder strap assembly 102 is attached to the hook
12 100 at a wide end of the hook. Likewise, the end of the shoulder strap
13 assembly 103 is attached to the eye 101 at a wide end of the eye. The wide
14 ends of the hook 100 and the eye 101 are wider than the corresponding loops
15 110, 111 in order to prevent the hook and the eye from being pulled through
16 the respective cloth loops. (*See* Henz, col. 3, ll. 14–23).

17 Claim 1 recites that “the connecting member [is] moveable in use
18 relative to each wing portion and associated wing guide in response to
19 changes in a wearer’s body position to adjust dynamically the configuration
20 of the breast support arrangement.” The Examiner correctly concludes that
21 this limitation is functional and is satisfied only if the connector possesses
22 the “ability to so perform and/or function” (Final Act. 6–7; Ans. 5), that is,
23 only if the connecting member is capable of movement in use relative to
24 each wing portion and associated wing guide in response to changes in a
25 wearer’s body position to adjust dynamically the configuration of the breast
26 support arrangement.

1 The Appellant correctly points out that the engagement of the wide
2 ends of the hook *100* and the eye *101* with the loops *110*, *111* would have
3 resisted movement of the shoulder strap assemblies *102*, *103* relative to the
4 wing portions or back bands *106*, *107* in response to changes in a wearer's
5 position. Even assuming, as the Examiner finds, that the shoulder strap
6 assemblies *102*, *103* swayed on the rings *104*, *105* coupling the shoulder
7 strap assemblies to the breast receptor cups *115*, *116*; or that the shoulder
8 strap assemblies slid relatively to the loops *108*, *109* on the back bands *106*,
9 *107* (*see* Ans. 4), these movements need not have resulted in dynamic
10 adjustment of the configuration of the breast support arrangement. The
11 Examiner has not adequately shown that movement of one of the shoulder
12 strap assemblies *102*, *103* at a shoulder area (*see* Ans. 6) necessarily would
13 result in movement relative to the wing portions or back bands *106*, *107*; or
14 in dynamic adjustment of the configuration of the breast support
15 arrangement.

16 The Examiner has not shown that the disclosure of Henz anticipates
17 independent claim 1 or dependent claims 16–23. We do not sustain the
18 rejection of claims 1 and 16–23 under § 102(b) as being anticipated by
19 Henz. Furthermore, the Examiner cites Dorf against claims 2 and 15 for
20 Dorf's description of a connecting member guide satisfying the limitations
21 specifically recited in claims 2 and 15. (*See* Final Act. 10–11). The
22 Examiner has not shown that the teachings of Dorf remedy the deficiencies
23 in the disclosure of Henz as applied to parent claim 1. We do not sustain the
24 rejection of claims 2 and 15 under § 103(a) as being unpatentable over Henz
25 and Dorf.

DECISION

We AFFIRM the Examiner's decision rejecting claims 1, 2 and 15–23. More specifically, we sustain the rejection of these claims under 35 U.S.C. § 112, second paragraph, as indefinite; do not sustain the rejection of claims 1 and 16–23 under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Henz; and do not sustain the rejection of claims 2 and 15 under pre-AIA 35 U.S.C. §103(a) as being unpatentable over Henz and Dorf.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a).

AFFIRMED